

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.724 OF 2003
IN
SUMM.SUIT NO.2102 OF 2003

M/s Pall Pharmalab Filtration P.Ltd.. Plff

versus

M/s Shree Enterprises .. Deft

Mr. O.S.Kutty for Plaintiff

Mr. N.G.Bhatt for Defendant

CORAM : D.G. KARNIK, J

DATED : 25th April 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in a suit filed by it for recovery of money. The plaintiff appointed the defendant as a distributor and written distributorship agreement was executed on 29th October, 2001 at Mumbai. In pursuance of the said agreement, the plaintiff supplied the goods to the defendants and sent invoices. for Rs.1,53,668/-. The

defendant issued a cheque for the said sum. However, the said cheque was dishonoured when presented for payment. Hence, the plaintiff has filed this suit for recovery of the money.

2. By filing an affidavit in reply, the defendant has denied the liability and prayed for an unconditional leave to defend the suit. I would consider below the defences raised by the defendant's counsel in his argument.

3. It is contended that this court has no jurisdiction to entertain and try this suit and only the court at Ahmedabad would have the jurisdiction. The Distributorship Agreement was entered into at Mumbai. Clause 25 of the Distributorship Agreement mentions that only the court at Mumbai would have the jurisdiction to entertain and try the suit and no other court would have the jurisdiction. The primary document was the Distributorship Agreement which conferred jurisdiction only on the Mumbai Court. The goods were supplied from Mumbai and therefore part of the cause of action arose at Mumbai. The plaintiff has obtained leave under clause 12 of the Letters Patent. Hence, this court does have the jurisdiction

to entertain and try the suit. In any event the defendant can only be granted conditional leave to defend the suit in view of the defences about the jurisdiction.

4. Learned counsel for the defendant then submits that there were past transactions prior to the Distributorship Agreement and therefore the defendant is entitled to set off of the amount due to the defendant under the past transactions. In para 5 (c) of the affidavit in reply, the defendant has stated that the defendant has raised two credit note one for Rs.11,520/- and another for Rs.12,129/- for the past transactions. Therefore the defendant is entitled to deduct the amount of Rs.23,649/-. In my view, even if the said amount of Rs.23,629/- is deducted from the suit claim an amount of over Rs. 1,30,000/- is still due and payable by the defendant and the defendant has no defence of substance in respect of the said balance. Hence, I grant conditional leave to the defendant, as follows :

" The defendant is granted conditional leave to defend the suit subject to depositing in the court the amount of Rs.1,30,000/- within

four weeks. On such deposit, the plaintiff shall be entitled to withdraw the same by furnishing security to the satisfaction of the Prothonotary and Senior Master. On furnishing of the security by the defendant, plaintiff shall have the liberty to apply. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant to file the written statement within six weeks. "

D.G.KARNIK, J